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BARUN CHANDRA THAKUR

v.

CENTRAL BUREAU OF INVESTIGATION AND OTHERS

(Criminal Appeal Nos. 2152-2153 of 2017)

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DECEMBER 11, 2017

[R.K. AGRAWAL AND ABHAY MANOHAR SAPRE, JJ.]

Code of Criminal Procedure, 1973 – s.438 – Bail – Anticipatory bail – Grant of – Murder of 7 year old school boy in school – Application for anticipatory bail/transit bail filed before Bombay High Court by the top Management Executives of the school (private respondents) – Interim stay from arrest granted to private respondents by single judge of High Court – Appellant-father filed intervention application opposing same – Single judge of High Court dismissed anticipatory bail applications – However, granted interim relief for one day subject to certain conditions – Meanwhile after the day of incident, a resolution was passed by District Bar Association Gurugram condemning the brutal act of accused unanimously resolving that no member of Bar would appear/represent the accused before court or any other forum – Private respondents then approached P&H High Court for grant of interim bail which stayed the arrest till 7.10.2017 – Single judge of High Court granted interim bail with certain directions – Appellant-father challenged this order before Supreme Court – Supreme Court disposed of the appeal, directing High Court to dispose of the bail applications within 10 days – High Court considered the matter afresh and made absolute the interim bail granted on 7.10.2017 to the private respondents till the presentation of challan subject to certain conditions – Challenged on the ground that private respondent committed fraud and suppression of material facts and they ought to have approached Sessions Court, Gurugram instead of directly approaching High Court when on 15.9.2017, the Resolution passed by Bar Association to the effect that no lawyer will represent the accused in the instant matter stood withdrawn – Held: The private respondents cannot be held guilty of any suppression, concealment or fraud in this matter for the simple reason that the petitions were prepared on 15.09.2017 and accepted

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by the Registry of the P&H High Court on 17.09.2017 – The fact relating to the withdrawal of the Resolution passed by the District Bar Associations, Gurugram and Sohna cannot be said to be in the knowledge of the private respondents – Moreover, this plea had been dealt with by single Judge in the order dated 07.10.2017 and had been negated – This incident had received wide coverage in the media, both electronic and print – In fact, it can be said that there was a trial by media, therefore, there was no fault on part of private respondents in directly approaching the High Court for grant of anticipatory/interim bail under s.438 of the Code, that too when the High Court has concurrent jurisdiction – On merits of the case, in the FIR, no allegation was made against the private respondents – The CBI was yet to examine and analyse the role of the private respondents in this case and there was no evidence of their complicity in the crime and there was not even a pointer of involvement of respondents in the alleged crime – Their involvement cannot be established until and unless, there was some substantial evidence against them – Single Judge, while granting interim bail to the private respondents till the presentation of Challan had laid down certain conditions – The investigation is still under progress and the CBI is yet to come to a conclusion regarding the involvement of the private respondents in the crime – The private respondents made out a case for grant of protection by way of interim bail till the presentation of Challan by the CBI – Therefore, the order passed by single Judge granting interim bail to the answering respondents till the presentation of Challan cannot be faulted with.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 2152-2153 of 2017.

From the Judgment and Order dated 21.11.2017 of the High Court of Punjab & Haryana at Chandigarh in CRMM Nos. 35003 and 35002 of 2017.

Sushil K. Tekriwal, Dr. Mamta Tekriwal, Venkateswara Rao Anumolu, Advs for the Appellant.

Mukul Rohtagi, R. S. Cheema, Sr. Advs, Sandeep Kapur, Maheen Pradhan, Rajat Soni, Ms. Apoorva Pandey, Gudipati G. Kashyap, Veer Sandhu, Ashneet Singh (for M/s. Karanjawala & Co.), Advs for the Respondents.

A The Order of the Court was delivered by

R.K. AGRAWAL, J. 1. Leave granted.

2. The present appeal is directed against the judgment and order dated 21.11.2017 passed by the High Court of Punjab & Haryana at Chandigarh in Criminal Miscellaneous Nos. M-35002 and 35003 of 2017 whereby learned single Judge of the High Court had granted interim bail to Mr. Ryan Pinto, Dr. Augustine Francis Pinto and Mrs. Grace Pinto—the top management executive of the Ryan International School till the presentation of challan subject to certain conditions.

3. **Brief facts:**

C (a) On 08.09.2017, the appellant herein dropped his son Pradyumn Thakur, aged 7 years, and his daughter, Vidhi Thakur to their School, viz., Ryan International School, Bhondsi at 8:00 a.m. At 08:10 a.m., the appellant received a phone call of his wife who asked him to immediately call Ms. Anju Dudeja of the said School. When the appellant contacted D Ms. Anju Dudeja, she told him that his son had a cut on his neck and is profusely bleeding. She asked him to reach Badshahpur Hospital where he was being taken. The appellant, along with his wife, left for Badshahpur Hospital but on the way he received a call from Ms. Anju Dudeja that they were taking the child to Artemis Hospital. On reaching E there, the appellant found that there was a cut on the right side of his son's neck up to the ear and his son was in Emergency Ward. The Doctor informed the appellant that his son Pradyumn had died.

(b) On receipt of the information, the police recorded a First Information Report (FIR) being No. 250 of 2017 dated 08.09.2017 at Police Station Bhondsi, Gurugram and arrested one Ashok Kumar, son of Amichand, on the same day. The State Government (Haryana), issued a Notification dated 17.09.2017, requesting the Central Bureau of Investigation (CBI) to take up the investigation. The Ministry of Personnel, Public Grievances and Pension (Department of Personnel and Training) Government of India, New Delhi, vide Notification dated F 22.09.2017, transferred the investigation of the case to the CBI which G re-registered the FIR already registered by the police authorities as case bearing No. RC8(S)/2017/SC-III/New Delhi on 22.09.2017 itself which is a reproduction of the FIR recorded by the police authorities at Police Station Bhondsi, Gurugram.

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(c) The private respondents, viz., Mr. Ryan Pinto, Dr. Augustine Francis Pinto and Mrs. Grace Pinto approached the Bombay High Court by filing Anticipatory Bail Application being Nos. 1599 and 1608 of 2017 for grant of transit/ anticipatory bail. Learned single Judge of the High Court of Judicature at Bombay, vide order dated 12.09.2017 in Anticipatory Bail Application No. 1599 of 2017 granted interim stay from arrest of these persons and the matter was posted for 13.09.2017. On coming to know about the filing of the above anticipatory bail applications, the appellant herein approached the High Court of Bombay by filing the intervention application opposing the transit bail. Learned single Judge of the High Court, vide order dated 14.09.2017, rejected the anticipatory bail applications being Nos. 1599 and 1608 of 2017. However, the interim relief granted by the High Court vide order dated 12.09.2017 was extended till 5:00 p.m. of 15.09.2017 subject to certain conditions.

(d) It may be relevant to mention here that immediately on the next date of the incident, that is, on 09.09.2017, a Resolution was passed by the District Bar Association, Gurugram condemning the brutal and dastardly act of the accused unanimously resolving that no Member of the Bar would appear/represent the accused before the Court or any other Forum. A similar Resolution was passed by the District Bar Association, Sohna.

(e) The private respondents approached the Punjab & Haryana High Court on 15.09.2017 by filing CRM-M Nos. 35002 and 35003 of 2017 for grant of interim bail. However, the said petition was accepted by the Registry of the High Court on 17.09.2017 and the copy of the said petition was supplied to the office of learned Advocate General for the State of Haryana on 18.09.2017. It appears that in the meantime, Dr. Augustine Francis Pinto approached this Court by filing a writ petition (criminal) being No. 139 of 2017 seeking transfer of case from the Punjab & Haryana High Court to Delhi which was taken up on 18.09.2017 and this Court disposed of the writ petition while deprecating the practice of the Bar Associations to pass a Resolution of this nature and also recorded the fact that the Bar Associations have withdrawn the Resolution.

(f) CRM-M Nos. 35002 and 35003 of 2017 for grant of interim bail were taken up by the Punjab & Haryana High Court but the effective order was passed only on 28.09.2017 staying the arrest of the private respondents till 07.10.2017 when the matter was directed to be listed. The appellant approached this Court by filing a petition for Special Leave

A to Appeal being Diary No. 30996 of 2017 which was taken up on 13.10.2017 by this Court when learned counsel for the appellant informed this Court that the appeal had become infructuous.

(g) Learned single Judge of the High Court, vide judgment and order dated 07.10.2017 in CRM-M Nos. 35002 and 35003 of 2017, considered the submissions made by the respective parties including that of the appellant and while fixing the cases for 05.12.2017 granted interim bail to the private respondents with certain directions. The operative portion of the order dated 07.10.2017 is reproduced below:-

C “It is a case where a student of a school has been murdered. After registration of the case, investigation with CBI is still at initial stage. It is working on the theory of possibilities and trying to analyse certain facts and evidence collected so far in the matter. The petitioner are admittedly resident of Mumbai. The question before the investigation agency is as to whether the provisions of Section 75 of the JJ Act or 12 of POCSO Act are attracted against the petitioner; whether the child was in direct and actual control of petitioners; or they have any other role in this case.

E Keeping in view the facts discussed above, I find it appropriate to give time to the investigation agency to analyse the evidence before it, look into the role of petitioners in this case and apprise this Court with further progress in the investigation and evidence against petitioners collected during investigation.

F On behalf of Ryan Augustine Pinto, it has been argued that he has no concern with the Trust running Ryan Schools but a magazine of the Ryan International School, Bhondsi, Gurugram shows that it has a message with his photograph, when he is mentioned as CEO of Ryan International Group. By joining the investigation, petitioner Ryan Augustine Pinto will be in a position to place required material before the CBI regarding allegations against him that he is in management of the school.

G Consequently, petitioners in both the petitions are directed to join the investigation by the CBI on receipt of notice in this regard. In the event of their arrest being required, they will be allowed interim bail in case bearing FIR No. RC 8(S)/2017/SC-III/New Delhi dated 22.09.2017 for the offences punishable under Sections 302 read with Section 34 IPC, Section 25 of the Arms Act, Section

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75 of the JJ Act and Section 12 of POCSO, Act, 2012 (earlier FIR No. 250 dated 08.09.2017 registered at Police Station Bhondsi, Gurugram) till next date on their furnishing bonds to the satisfaction of Investigation Agency. However, they shall abide by the terms and conditions as envisaged under Section 438(2)(i) to (iv) Cr.P.C. failing which they shall lose the benefit of interim bail allowed to them.

Further report relating to investigation be submitted on the next date.

List on 05.12.2017.”

(h) The appellant, once again approached this Court by filing petition for Special Leave to Appeal (Criminal) being Nos. 8044-8045 of 2017 challenging the order dated 07.10.2017 passed by learned single Judge of the Punjab & Haryana High Court. This Court, vide order dated 06.11.2017, disposed of the special leave petitions by requesting the High Court to dispose of the bail applications within a period of 10 (ten) days hence. This Court was inclined to make such request as the High Court had granted interim protection to the private respondents under Section 438 of the Code of Criminal Procedure, 1973 (in short ‘the Code’) for a long period. Pursuant to the order dated 06.11.2017 passed by this Court, learned single Judge of the High Court, considered the matter afresh and vide judgment and order dated 21.11.2017, made absolute the interim bail granted on 07.10.2017 to the private respondents till the presentation of the challan subject to certain conditions.

4. We have heard learned counsel for the parties and perused the records.

5. Learned counsel for the appellant contended that the private respondents while approaching the High Court for grant of interim bail/anticipatory bail have concealed and suppressed the material facts. He further contended that the respondents have also committed/indulged in fraud. According to him, they ought to have approached the Sessions Court, Gurugram, instead of directly approaching the High Court when on 15.09.2017, the Resolution passed by the District Bar Associations Gurugram and Sohna dated 09.09.2017 to the effect that no lawyer will represent the accused in the instant matter, stood withdrawn. He further submitted that the private respondents have committed heinous offence as would be clear from the averments made by the CBI in the reply

A affidavit filed by it before the High Court. A special reference was made to the following averments:-

B “.....The interrogation of the petitioner is very much essential in the interest of investigation of the case and also to unearth the larger conspiracy behind the murder of a seven years old boy in his school. Any relief at this stage in the form of anticipatory bail may hamper the course of investigation of the case as there is every possibility that he will misuse the liberty granted by this Hon’ble Court.

C 4(1) That the petitioners is not entitled to relief (s) as prayed for. The petition is misconceived apart from being meritless and hence deserves to be dismissed.....”

D “4(J)-(P) ...Prima facie it seems that the careless attitude of the Management has aided to the murder of Master Pradhyuman in the washroom of the school and accordingly local police arrested two school officials namely Francis Thomas and Jayesh Thomas in the instant case.

10. That the contention of petitioner at paragraph 10 of the petition are opposed by the prosecution on the following grounds:

E i) That CBI has taken up the investigation of the case and the investigation of this case is still pending at crucial stage. Larger conspiracy behind the murder of a seven year old boy is yet to be unearthed.

F iii) That the possibility of him being members of the conspiracy behind the murder of Master Pradhuman in the washroom of Ryan International School, Sohna Road, Bhondsi, Gurugram on 08.09.2017 and its abetment, destruction of the evidence by him cannot be ruled out as he is within the ambit of investigation and he is to be dealt by the law at par with other accused.

G iv) That CBI has taken up the investigation of this case on 22.09.2017, the records of the school management and those of the head office of Ryan International Group of Institutions have not been collected by CBI and the investigation is at a preliminary stage.”

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Learned counsel, thus, contended that even the CBI, on the materials and possibilities of the involvement of the private respondents, had opposed the plea of grant of interim bail/anticipatory bail, and therefore, the High Court ought not to have granted interim bail to them. A

6. Learned senior counsel for the private respondents, however, submitted that from a reading of the FIR registered by the Police Station, Bhondsi, Gurugram, which was re-registered by the CBI, there is no allegation against the private respondents. Learned senior counsel further submitted that even the CBI in the reply affidavit filed before the High Court as also the documents produced before learned single Judge at the time of hearing of the matter does not show any involvement of the private respondents in the alleged offence. He, thus, submitted that the order dated 21.11.2017 passed by learned single Judge does not call for any interference. B C

7. We have given our thoughtful consideration to the various pleas raised by learned counsel for the parties. D

8. In our considered opinion, the private respondents cannot be held guilty of any suppression, concealment or fraud in this matter for the simple reason that the petitions were prepared on 15.09.2017 and accepted by the Registry of the Punjab & Haryana High Court on 17.09.2017. The fact relating to the withdrawal of the Resolution passed by the District Bar Associations, Gurugram and Sohna cannot be said to be in the knowledge of the private respondents. Moreover, this plea had been dealt with by learned single Judge in the order dated 07.10.2017 and had been negated. E

9. Further, we cannot lose sight of the fact that this incident had received wide coverage in the media, both electronic and print. In fact, it can be said that there was a trial by media, therefore, when the private respondents have directly approached the High Court for grant of anticipatory/interim bail under Section 438 of the Code, that too when the High Court has concurrent jurisdiction, we cannot find any fault with the action of the private respondents. F G

10. Coming to the merits of the case, on going through the FIR registered by the Police Station, Bhondsi dated 08.09.2017 which admittedly has been re-registered by the CBI, we find that no allegation has been made against the private respondents herein. Learned single H

A Judge of the High Court, after considering the material and evidence on record as also the material produced by the CBI before it has held as under:-

B “14. From the submissions of learned retainer counsel for CBI, it appears that against petitioners investigation of the case and the evidence collected by investigating agency stand at the same stage as it was on 07.10.2017. While allowing interim relief to the petitioners on 28.09.2017, it was ordered that if required, petitioners will be called and joined in investigation of the case, however, till 07.10.2017, they were never called to join the investigation. Vide order dated 07.10.2017, petitioners in both the petitions were directed to join the investigation on receipt of notice in this regard and it has been fairly conceded that no notice calling upon the petitioners to join investigation have been issued till date.”

D 16. In para 9 of preliminary submissions, it has again been submitted that here is possibility of petitioners being member of conspiracy behind the crime in this case. In para 12 of the para-wise reply, it has been stated that CBI has yet to examine and analyze the role of petitioners in this case. Similar pleas have also been raised in the reply filed in petition CRM-M-35002-2017.

E 17. The question, which arise for consideration at this stage is as to whether CBI intends to arrest petitioner without any evidence of their complicity in the crime only on the basis of possibilities and probabilities. The answer to this question will be in negative. It is not disputed that in the investigation conducted so far, there is not even a pointer of involvement of petitioners in the crime in this case. Some lapse or negligence on the part of school management or even of the trustees or other office bearer of the school if found at any point of time, may not be a pointer towards their complicity in commission of murder of a school student, until and unless there is some substantial evidence of their involvement in this crime. While passing order dated 07.10.2017, it was observed that CBI “is working on the theory of possibilities and trying to analyze certain facts and evidence collected so far in the mater, as such, it will be appropriate to give time to investigating agency to analyze the evidence before it, look into the role of petitioners

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in this case and apprise this Court with further progress in the investigation and evidence against petitioners collected during investigation. Till date, status of investigation against the petitioners is at the same stage as it was on the date of passing of order dated 07.10.2017. It is a case where a seven years old student of the school was brutally murdered in the school. It is not only an unfortunate incident but also a gruesome and heinous crime and the State Government thought it appropriate to hand over the investigation of the case to CBI, a premier investigating agency of the country. As admitted by learned counsel representing CBI, petitioners have not ever been called for joining the investigation and CBI has arrested a student of the school as main accused for murder of Pradyumn and is concentrating on his role in committing the crime. It has not come on record that this crime with committed by the conductor (Ashok), who was arrested by the police on the day of occurrence or the student arrested by the CBI in this case, in conspiracy with the petitioners or he had ever any contact with them. Petitioners Dr. Augustine Francis Pinto and Mrs. Grace Pinto (in CRM-M-35003-2017) are trustees of Saint Xavier's Education Trust, which is running several school in the country. The status of petitioner Ryan Augustine Pinto (in CM-M-35002-2017) with regard to the management of the school in which crime was committed is yet to be ascertained. It will also be a point of investigation for the Investigating Agency as to whether the petitioners, while living in Mumbai, are directly responsible for any lapse of the Administration in the School."

11. Thus, as on date, the CBI is yet to examine and analyse the role of the private respondents in this case and there is no evidence of their complicity in the crime and there is not even a pointer of involvement of respondents herein in the alleged crime. Their involvement cannot be established until and unless, there is some substantial evidence against them. Learned single Judge, while granting interim bail to the private respondents till the presentation of Challan had laid down certain conditions which are as follows:-

"As a result of my above discussion, I find merits in both the petitions and the same are allowed. Order dated 07.10.2017 granting interim bail to the petitioners is made absolute, till the presentation of Challan, subject to the following terms:-

- A (i) that the petitioners shall make themselves available for interrogation by the investigating agency as and when required;
- (ii) that the petitioners shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the accusation against them so as to dissuade him from disclosing such facts to the Court or to investigating agency;
- B (iii) that the petitioners shall not leave India without the prior permission of the Court.
- C (iv) that the petitioners will seek regular bail on the presentation of Challan in Court.”

D 12. In our considered opinion, without expressing anything on the merits of the case as the investigation is still under progress and the CBI is yet to come to a conclusion regarding the involvement of the private respondents in the crime, the private respondents herein have made out a case for grant of protection by way of interim bail till the presentation of Challan by the CBI as has been passed by learned single Judge. Therefore, the order passed by learned single Judge granting interim bail to the answering respondents till the presentation of Challan cannot be faulted with.

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F 13. In view of the foregoing discussion, we therefore, do not find any good ground to interfere with the order dated 21.11.2017 passed by learned single Judge of the High Court. The appeal is dismissed. However, the parties shall bear their own costs.